IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6911 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

MANILAL NATHABHAI PATEL

Appearance:

MR SN SHELAT ADVOCATE GENERAL with
MR HARDIK C RAWAL for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 16/03/2001

ORAL JUDGEMENT

1. Restored on oral request and heard the learned counsel for the petitioner. No one appeared for the respondent though served.

2. This Special Civil Application under Article 227 of the Constitution challenges the award of the Labour Court, Baroda in Reference (LCV) No.882 of 1984 whereby the respondent-conductor was ordered to be reinstated with 50% backwages.

3. When this petition was admitted in 1989, the operation of the impugned award was stayed only as far as the part granting backwages was concerned. The learned counsel for the petitioner vehemently submitted that this was a rare case in which the misconduct of re-issuing tickets was proved during the departmental enquiry and the respondent was not entitled to reinstatement and much less to 50% backwages. It was also submitted that the respondent had waived his right to challenge the legality and validity of the departmental enquiry in the Labour Court and, in his own statement before the Enquiry Officer, he failed to explain the punch-marks on the tickets alleged to have been re-issued as also the overwriting in the way-bill. Therefore, in short, according to the petitioner, it was a case of admitted serious misconduct involving dishonesty and moral turpitude.

4. It is recorded in the impugned award that the respondent had not challenged the legality of the departmental enquiry but expressly agitated his dispute regarding the findings of the enquiry. The trial Court examined the issues as to whether the charge was proved and whether the punishment of dismissal was reasonable. It appears from the record that the way-bill on which the overwritings in the number of tickets were found and the tickets alleged to have been re-issued were not produced and the petitioner had mainly relied upon the findings of the departmental enquiry. It was found and held by the Labour Court that the allegation of overwriting in the way-bill and the charge of re-issue of tickets was not properly proved by documentary evidence and oral evidence which could have been produced. In that context, the learned counsel for the petitioner pointed out from the statement of the respondent, which was recorded before the Enquiry Officer, that the replies and explanations given by the respondent were ex-facie unbelievable and unsatisfactory. It appears from the said statement which is annexed to the petition that the respondent was examined and cross-examined in presence of the reporter who was also examined on the same day. The learned counsel failed to justify the procedure of examination and cross-examination of the delinquent as also the reliance placed by him on the discrepancies alleged to have been elicited from his answers. At the end of such

enquiry, the Enquiry Officer has also relied upon the explanation elicited from the respondent for recording a finding that the respondent had adopted a negative attitude and the overwriting in the way-bill was conclusive evidence of re-issue of tickets. Thus, the explanation of the respondent that correction might have been required due to the way-bill having been written in the moving bus or that it might be due to some possible error or slip, was not accepted. However, in view of the said explanation, additional and sufficient evidence was held to be necessary according to the impugned award.

5. After considering the evidence as above, it cannot be said that the finding of the Labour Court regarding insufficiency of evidence to conclusively prove the charges was perverse. No other illegality is shown or found in the impugned award. In such circumstances, it would not be proper for this Court, in exercise of the jurisdiction under Article 227 of the Constitution, to record a different finding of fact on re-appreciation of evidence. Therefore, in the result, the petition is rejected and Rule is discharged with no order as to costs. The interim relief granted earlier stands vacated.

Sd/-

16.3.2001 (D.H.Waghela, J.)

(KMG Thilake)